UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA	)	
	)	Case No. 17-3054
v.	)	
	)	MAGISTRATE JUDGE BROWN
CASON MORELAND	)	

UNITED STATES' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR DETENTION

Defendant Cason "Casey" Moreland is a General Sessions Court Judge who has presided over innumerable criminal cases and has sworn an oath to administer justice. Nevertheless, he was arrested on March 28, 2017 after being caught on tape trying to obstruct a federal corruption probe by bribing a material witness and plotting to frame that same witness by planting drugs on her. In carrying out these schemes, Moreland employed sophisticated means to disguise his own involvement. He recruited intermediaries, used a "burner" phone subscribed in a fictitious name, and took pains to avoid having his fingerprints appear on the affidavit that he was bribing the material witness to sign. And when he became briefly concerned that his involvement in the scheme would be detected, he fabricated false exculpatory evidence to cover his tracks.

There is no reason to believe that Moreland's attempts at obstruction and witness tampering would have stopped absent his arrest, and would not resume if he is released. The tampering that led to his arrest pertained to an individual referred to in the complaint as Person 1. And while she has been one of the most prominent material witnesses who has spoken out against Moreland, she is far from the only witness with information relevant to the underlying corruption probe. Indeed, any suggestion that Moreland's attempted obstruction and tampering might be limited to Person 1 is belied by a disturbing document that the FBI recently discovered, as it began searching Moreland's iPhone pursuant to a search warrant. On his phone, they found an item in the Notes section with the title, "Witnesses," which Moreland evidently created on February 9, 2017. That document consists of a list of the names and corresponding phone numbers of 13 individuals, including Person 1. The fact that Moreland has already attempted to tamper with Person 1 strongly suggests that he may also be inclined to tamper with some or all of the other individuals included on the list.

There is no condition or combination of conditions that will assure that a defendant who has demonstrated such a proclivity, willingness, and ingenuity to obstruct justice—all while under federal investigation and intense media scrutiny—will not do so again if released. The lack of acceptable release conditions is all the more apparent for this defendant, who is cloaked with the authority of a judicial officer, possesses intimate knowledge of the criminal justice system's workings, and is now starkly aware of the severity of the criminal charges he faces. To protect the integrity of the ongoing federal corruption probe, and the safety of potential witnesses, Moreland should be detained pending indictment and trial.

I. Background

As set forth in more detail in the criminal complaint, the FBI is conducting an investigation into whether Moreland and others violated federal anti-corruption statutes, including 18 U.S.C. §§ 1341, 1343, and 1346 (honest services fraud); and 18 U.S.C. § 1951 (Hobbs Act extortion under color of official right). Moreland is well aware of the pending federal investigation, and is also well aware that an individual, identified in the complaint as Person 1, is a material witness in the investigation.

Shortly after learning of the existence of the federal investigation, Moreland met with an individual, identified in the complaint as CS-1, and tried to enlist his help in two schemes to obstruct justice and tamper with Person 1. In one of those schemes, Moreland asked CS-1 to find an intermediary who would offer Person 1 a bribe in exchange for signing an affidavit recanting her prior statements against Moreland. In another scheme, Moreland asked CS-1 to find a law enforcement officer who would be willing to plant drugs on Person 1 and/or orchestrate a traffic stop in which the planted drugs would be found on her.[1]

In seeking to execute these schemes, Moreland took extraordinary steps to disguise his own involvement. He recruited intermediaries, including CS-1. He directed CS-1 to buy him a burner phone, which was registered in the fictitious name of Raul Rodriguez, so that Moreland could communicate about the schemes without detection. He took pains not to get his fingerprints on the affidavit that he was bribing Person 1 to sign. And when he became briefly concerned that his involvement in the scheme might be detected, he created false exculpatory information to cover his tracks. Specifically, in carrying out the scheme, Moreland sent CS-1 a photograph of a pile of cash, which CS-1 was supposed to use to prove to CS-2 (and Person 1) that the funds were available. When CS-2 told CS-1, who was with Moreland at the time, that Person 1 did not want to sign the affidavit and would be alerting her attorney, Moreland realized that the photo he had sent of a pile of cash would look suspicious. He therefore decided to send CS-1 a text message that falsely purported to explain that the photo of the money simply represented the proceeds of the sale of his motorcycle.

[1] To be clear, there is no indication that CS-1 ever spoke to the law enforcement officer about the drug-planting scheme, and no indication that the law enforcement officer knew anything about it or had any willingness to participate in it.

On March 28, 2017, Moreland was arrested on a criminal complaint charging him with attempting to obstruct justice through bribery and witness tampering, in violation of Title 18, United States Code, Sections 1510, 1512(b)(3), 1512(c)(2), and 1513(e). The Court has set a preliminary and detention hearing for March 31, 2017 at 1:00 p.m.

II. Discussion

A. Applicable Law

Even before the passage of the Bail Reform Act, it was well established that a trial court had the inherent power to detain a defendant pending trial "if necessary to ensure orderly trial processes," which include the prevention of "[i]nterference with government witnesses by a defendant." *United States v. Graewe*, 689 F.2d 54, 56-57 (6th Cir. 1982) (per curiam). That inherent power is codified in 18 U.S.C. § 3142(f)(2)(B), which requires the Court to hold a detention hearing upon motion of the government in a case that involves "a serious risk that [a defendant] will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate a prospective witness or juror." 18 U.S.C. § 3142(f)(2)(B).

The power to detain a defendant who poses a serious risk of obstruction or witness tampering is a close corollary of the power to detain a defendant who poses a risk of flight, since, as then-Judge Breyer explained, "an eventual trial that reflects witness intimidation or jury tampering is as bad as no trial at all." *United States v. Avevedo-Ramos*, 755 F.2d 203, 206 (1st Cir. 1985). In light of this well-settled principle, the Sixth Circuit "has consistently upheld pretrial detention in response to threats to intimidate witnesses." *United States v. Vasilakos*, 508 F.3d 401, 411 (6th Cir. 2007); *see also United States v. Gotti*, 794 F.2d 773, 779 (2d Cir. 1986) (noting "the long-standing principle that pretrial detention does not offend due process when it is imposed to prevent a defendant from intimidating witnesses").

Indeed, pretrial detention is generally "even more justified in cases of violations related to the trial process (such as witness tampering) than in cases where the defendant's past criminality was said to support a finding of general dangerousness." *United States v. LaFontaine*, 210 F.3d 125, 134 (2d Cir. 2000). This is because "[w]itness tampering by its very nature strikes at the fairness and perverts the integrity of the judicial process." *United States v. Grisanti*, 1992 WL 265932. at *6 (W.D.N.Y. Apr. 14, 1992). And while it is true that "witness tampering that is accomplished by means of violence may seem more egregious, the harm to the integrity of the trial is the same no matter which form the tampering takes." *LaFontaine*, 210 F.3d at 135.

In some cases, "a single incident of witness tampering" has been found to constitute "a 'threat to the integrity of the trial process'" that "was sufficient to revoke bail." *Id.* at 134 (quoting *Gotti*, 794 F.2d 779 & n.5). That said, "[t]he statute, by its nature, is always looking forward," such that the crucial question for purposes of detention is "whether there is a serious risk of obstruction in the future." *United States v. Madoff*, 586 F. Supp. 2d 240, 250 (S.D.N.Y. 2009) (emphasis omitted).

In making the determination of future risk, however, it is highly probative to consider the defendant's past conduct. "All bail decisions rest on predictions of a defendant's future behavior," and a defendant's recent willingness to obstruct justice and tamper with witnesses "may shed considerable light on his motive, capacity and propensity to commit certain acts if free on bail." *Gotti*, 794 F.2d at 779; *see also United States v. Hoey*, 2014 WL 572525, at *3 (S.D.N.Y. Feb. 13, 2014) (noting that acts of obstruction from three years earlier were not stale and could be used "for purposes of assessing his risk of future obstruction"). When a defendant has demonstrated "that he is willing to take extraordinary risks to engineer a favorable outcome for himself" in a criminal proceeding, "the Court cannot assume . . . that [he] will not engage in such tactics again." *United States v. Poulsen*, 521 F. Supp. 2d 699, 703 (S.D. Ohio 2007).

B. There Is a Serious Risk that Moreland Will Obstruct Justice or Tamper with Witnesses

Here, there is a serious risk that Moreland will attempt to obstruct justice or tamper with witnesses in the future. That conclusion rests on a number of factors, the most significant of which is the recency and egregiousness of Moreland's obstructive conduct. Within the past few weeks, Moreland has concocted two separate schemes to obstruct justice and tamper with witnesses.

One scheme involved his willingness—while under investigation by both the FBI and the Board of Judicial conduct, and while subject to intense scrutiny by the media—to bribe a material witness (Person 1) to sign an affidavit recanting statements she had previously made that were adverse to his penal interest. Moreland had an affidavit drawn up, and provided an intermediary with $5,100 in cash to give to a second intermediary, who in turn would split the money with Person 1. While executing the scheme, Moreland was advised that Person 1 wanted to cross out numerous statements in the affidavit that she believed to be untrue. In response, Moreland noted that if Person 1 wanted the money, the affidavit has "got to help [him]." When Moreland was later told that, for an extra $1,000, Person 1 would sign the affidavit "as-is"—that is, without taking out any of the numerous statements she had already identified as false—Moreland agreed, and provided the extra cash that same evening.

Moreland's willingness to bribe a material witness to sign a false affidavit is remarkable enough. But what is even more alarming is the second scheme, in which Moreland demonstrated his willingness to plant drugs on the same material witness in the hopes of destroying her credibility. Moreland was willing to have an intermediary buy illegal drugs and plant them on Person 1, and then pay a law enforcement officer to pull her over. In concocting this scheme, Moreland evidently had no qualms about perverting the judicial system and framing an innocent person—perhaps exposing her to serious jail time—in order to help himself.

But for law enforcement's intervention, there was a substantial risk that Moreland would have succeeded in his efforts to frame Person 1 for a crime she did not commit, perhaps corrupting a law enforcement officer through bribery in the process. Indeed, in the weeks leading up to his arrest, Moreland took several substantial steps toward accomplishing the drug-planting scheme, including (1) providing CS-1 with part of Person 1's license plate number; (2) sending CS-1 to Person 1's residence to conduct surveillance; (3) inquiring of CS-1 how much money the law enforcement officer wanted; (4) inquiring of CS-1 whether the law enforcement officer would be the one to pull Person 1 over; and (5) inquiring of CS-1 whether the law enforcement officer had a drug dog. Even in Moreland's own telling, the problem with the drug-planting scheme was not that it represented a grossly immoral and illegal attempt to pervert justice; rather, the problem was simply that Person 1 "don't got a damn driver's license."

For anyone to concoct a witness-bribery scheme and a drug-planting scheme while under federal investigation for corruption charges is shocking. It is even more so when you consider that Moreland is an elected official who presides over a court of law and who has taken an oath to administer justice fairly.

While these two recent episodes are the most shocking and egregious examples of his obstructive conduct, they cannot be seen as mere aberrations. Indeed, Moreland has repeatedly demonstrated a willingness to lie for his own benefit and to use his power as a judge to manipulate the court system to benefit himself and his friends. As detailed in the complaint, Moreland took a series of official acts, outside of the normal judicial process, to benefit Person 1:

- In July 2015, Moreland waived Person 1's court fees outside of normal judicial procedures, after meeting her at a local restaurant. He then sent her a text message stating, "You now officially owe me !!" Around this same time, Person 1 was told by Person 2 (who is now deceased) that two years earlier, Person 2 had slept with Moreland to get out of DUI charge.

- In December 2015, Moreland wrote a letter to the Department of Motor Vehicles on official court letterhead, indicating that the interlock device should be removed from Person 1's car. In agreeing to write this letter, Moreland told Person 1 that he would have to work overtime to prepare it, and that his "overtime work may really cost ya." He also invited Person 1 to come to his office to "play secretary" by writing the letter, while noting "I expect a lot from my employees" and that "I wasn't referring to your typing skills!"

- In June 2016, Moreland intervened during a traffic stop of Person 1 by asking Person 1 for the name of the arresting officer, then calling that officer's supervisor, and misrepresenting to him that Person 1 was coming to see him on official business. In fact, Person 1 was driving to meet Moreland at a bar. After having drinks, they went to his judicial chambers and had sex.

- In November 2016, Moreland intervened to help Person 1 dispose of traffic tickets by placing the tickets on the docket while ensuring that the officers who issued the tickets would not be subpoenaed. As a result, the tickets were dismissed and/or the fines were retired.

When Moreland's relationships with Person 1 and Person 2 came under public scrutiny, he initially responded by issuing a statement to *The Nashville Scene* in which he falsely said: that he "never had an inappropriate relationship with [Person 1]"; that he "took the proper step of recusal" from any cases involving Person 1 and Person 2; and that "[a]t no time did [he] intervene on [behalf of Person 1 or Person 2] during or after judgments were rendered by the appropriate courts." *See* Steve Cavendish & Walter Roche, *Questions Surround Trip Taken by Judge, Lawyers, Women*, NASHVILLE SCENE, Jan. 31, 2017. Later, Moreland acknowledged that he had in fact had an affair with Person 1, but falsely told WKRN that he met her for the first time "long after I had helped her in any shape, form, or fashion. Her cases were over before I ever met her." *See* WKRN Web Staff, *Embattled Judge Casey Moreland Opens Up on Allegations for First Time*, WKRN, Feb. 22, 2017.

Other reports and public records have shown a similar willingness, stretching over the course of many years, to engage in deceit and to manipulate the judicial system to benefit himself and others. For example:

- In 2006, Moreland admitted to NewsChannel5 that he has dismissed tickets for friends (or friends of friends), and even dismissed all tickets on the docket on a given day because he happened to be in a good mood. *See* Phil Williams, *Judge Repeatedly Dogged by Ethics Questions*, NewsChannel5, Feb. 7, 2017.

- In 2009, the Tennessee Board of Judicial Conduct privately reprimanded Moreland for using court employees working on city time to do work for him at his house. *Id.*

- In October 2014, the Tennessee Board of Judicial Conduct publicly reprimanded Moreland for waiving the 12-hour cooling-off period in a high-profile domestic assault case on the basis of improper *ex parte* communications with Bryan Lewis, who is a friend of Moreland's and who represented the defendant. *See* http://www.tncourts.gov/sites/default/files/docs/moreland_-_public_reprimand_11-3-2014.pdf.

- In October 2015, Moreland's future son-in-law was arrested for his second DUI, after driving the wrong way down Interstate 40. He reportedly told officers, when asked to rate his drunkenness on a scale of 1 to 10, that he was a "one thousand and two." Moreland eventually recused himself from the case, and another judge accepted a plea deal in which the defendant agreed (among other things) to serve 10 days in jail. Records indicate that Moreland then intervened to unwind the terms of the plea deal without the State's knowledge by directing the Criminal Court Clerk to recall the committal order and to reflect that the defendant's sentence should be "time served," even though he was in custody for only three hours and 21 minutes, rather than the 10 days set forth in the plea agreement. *See* Demetria Kalodimos, *Court Records: Judge Moreland Intervened in Future Son-in-Law's DUI Case*, WSMV, Mar. 13, 2017.

- In November 2016, an audit found that Moreland's drug court had billed taxpayers "for travel and meals for at least five people who didn't work for Metro government." *See* Demetria Kalodimos, *Audit: Taxpayer Money Spent on Travel, Meals for Non-Metro Employees*, WSMV, Mar. 17, 2017.

While these latter episodes, standing alone, would not amount to obstruction of justice, they are part and parcel a clear pattern of Moreland being willing to flout the law for his own benefit. When combined with the more egregious obstructive conduct described above, there can no doubt that Moreland possesses a willingness and inclination to further obstruct justice and tamper with witnesses.

Nor can there be any doubt that, if released, Moreland would have ample opportunity to engage in further obstruction and tampering. The underlying public corruption investigation involves a large number of potential witnesses, likely including many who are not yet known to the FBI. Some of the potential witnesses work for Moreland or are otherwise subject to his authority as a judge; other witnesses may have criminal liability of their own and may be all too willing to collaborate with him to change their stories or destroy documents. Indeed, during the witness-bribery scheme set out above, Moreland called two suspected co-conspirators from the "Raul Rodriguez" burner phone shortly after he received the affidavit back from CS-1, indicating that there are others who may already be complicit in the obstruction.

Even more disturbing, the FBI recently discovered a note on Moreland's iPhone, created on February 9, 2017, with the title, "Witnesses." That note contains a list of the names and corresponding phone numbers of 13 individuals, including Person 1. The fact that Moreland has already attempted to tamper with Person 1 strongly suggests that he may also be inclined to tamper with some or all of the other individuals included on the list.

Moreland might contend that whatever prior inclination he might have had to tamper with witnesses has now been eliminated, since he has now been arrested for precisely this conduct and will be under strict supervision if he is released. It should be noted, however, that when Moreland engaged in the obstructive conduct described in the complaint, he was already under intensive public scrutiny. Rather than dissuading him from tampering with witnesses, this scrutiny merely increased his willingness to take elaborate measures to obscure and disguise his own conduct. Thus, this Court should find that there is a "serious risk" that Moreland "will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror." 18 U.S.C. § 3142(f)(2)(B).

C. No Conditions Short of Detention Will Suffice

The Court must next consider whether there is any condition or combination of conditions that will reasonably assure the appearance of the person as required and the safety of any other person and the community. *See* 18 U.S.C. § 1342(e), (g). In this context, assuring the safety of any other person and the community includes assuring that the defendant will not engage in obstruction or witness tampering. *See LaFontaine*, 210 F.3d at 132-35; *Poulsen*, 521 F. Supp. 2d at 703-04 (noting that "the very act of witness tampering may satisfy the 'dangerousness' requirement for detaining a defendant pretrial, due to the threat such conduct poses to the integrity of the trial process"); *United States v. Singh*, 2012 WL 3260232, at *3 (E.D.N.Y. Aug. 8, 2012) ("Based on this credible evidence that Defendant has attempted to subvert the trial process, the Court finds that Defendant poses a threat to the community and must not be released."). There is no requirement to show that the threat of future obstruction and tampering is directed to a "particular, specified witnesses." *United States v. Millan*, 4 F.3d 1038, 1048 (2d Cir. 1993).

Here, no conditions short of detention will suffice to assure that Moreland will not engage in future obstruction or witness tampering. Moreland has already demonstrated a willingness to take extraordinary measures to engage in witness tampering without being detected. He enlisted the help of an intermediary (CS-1) who had little discernable connection to him, and asked that intermediary to use an additional intermediary to contact Person 1. He directed CS-1 to buy him a burner phone in a fictitious name, so that he could communicate about the obstructive schemes without detection. He directed CS-1 to "feel out" Person 1 and CS-2 in case they were trying to set him up. He insisted that CS-1 take the fake affidavit out of an envelope so that his own fingerprints would not be on it. And he fabricated false exculpatory evidence to cover his tracks.

As courts have noted, even elaborate and seemingly restrictive conditions of detention "do not assure the safety of other persons and the community in a manner remotely commensurate to pretrial detention in a government facility." *See United States v. Agnello*, 101 F. Supp. 2d 108, 114 (E.D.N.Y. 2000). This is true for at least two reasons.

First, the effectiveness of any conditions of release depends largely on the good-faith compliance of the defendant. *See id.* at 115; *see also United States v. Hir*, 517 F.3d 1081, 1092 (9th Cir. 2008); *United States v. Tortora*, 922 F.2d 880, 886-87 (1st Cir. 1990). And where, as here, a defendant has already demonstrated a willingness to obstruct justice while seeking to avoid detection, he "has forfeited whatever benefit of the doubt to which he might otherwise have been entitled." *Poulsen*, 521 F. Supp. 2d at 704. This is particularly true here, where Moreland has already demonstrated a willingness to violate his sworn oath of office. Someone who cannot be trusted to follow a sworn oath cannot be trusted to follow the Court-imposed conditions of supervision.

Second, the realities of electronic communication leave the Court "ill-equipped to supervise [the defendant's] conduct." *Id.* at 706. "Pen registers, consensual eavesdropping, self-enforced visitor restrictions and logs all would present the need for a substantial amount of additional supervision and still would not eliminate obvious gaps in the scope of protection required to shield witnesses from the entreaties, importuning, or worse by a determined accused." *Grisanti*, 1992 WL 265932, at *7. Indeed, the witness-bribery scheme and the drug-planting scheme were both carried out from the confines of Moreland's sister's home, using intermediaries and a burner phone to avoid detection.

Moreland's release would undoubtedly have a dramatic chilling effect on potential witnesses. Person 1 is the most prominent witness who has come forward with information against Moreland, and he has concocted a scheme to destroy her reputation and perhaps send her to jail by framing her for a crime she did not commit. Moreland has already created a list of "Witnesses" that includes Person 1. Anyone included on that list, or who might otherwise be inclined to provide information about Moreland, would reasonably be extremely concerned about the retaliation they might face if Moreland is released.

"The safety of witnesses and others, and the integrity of the trial, should not be jeopardized by measures that clearly fall short of the safety provided by pretrial detention." *Agnello*, 101 F. Supp. 2d at 115. Moreover, "such extraordinary burdens on government resources are not contemplated by the Bail Reform Act in order to allow an individual to be released who otherwise should be detained." *Id.* at 116. "A defendant who has demonstrated his unsuitability for pretrial release by actions calculated to subvert the criminal justice process should not be able to buy his way out by constructing a private jail, which cannot provide the same assurance of safety to the community that Congress sought to secure in the Bail Reform Act." *Id.*

In sum, Moreland's willingness to use burner phones and intermediaries to tamper with witnesses demonstrates that nothing short of detention will preserve the integrity of the investigation and trial and assure the safety of the witnesses.

III. CONCLUSION

This is an extraordinary case in which a public official discovered that he was under federal investigation, and soon thereafter concocted two shocking obstruction schemes to tamper with a material witness. One of those schemes involved bribing her to sign an affidavit; the other involved attempting to bribe a law enforcement officer to frame the witness for a crime she did not commit. These schemes were carried out in a calculated, determined manner designed to hide Moreland's involvement, and they came on the heels of a lengthy history of Moreland flouting the rules to benefit himself and his friends. This Court bears the solemn responsibility of protecting potential witnesses from tampering, and protecting the public's right to an investigation and trial free from further obstruction. Given the disturbing facts of this case, the only way to assure these protections is through an order for pretrial detention.

Respectfully submitted,

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